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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-231

AMERICAN POLLUTION PREVENTION COMPANY, INC.,
Respondent,

vs.

NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY,
Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

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No. .....

AMERICAN POLLUTION PREVENTION COMPANY, INC.,

Respondent,

vs.

NATIONAL ALFALFA DEHYDRATING AND MILLING COMPANY,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

Petitioner, National Alfalfa Dehydrating and Milling Company, prays that a Writ of Certiorari issue to review the judgment of the Minnesota Supreme Court entered in the above-entitled case on May 23, 1975.

OPINIONS BELOW

The Order of the State Trial Court is unreported and is printed in Appendix B hereto.

The Opinion of the Minnesota Supreme Court, printed in Appendix A hereto, is reported in 230 N.W.2d 63. It affirmed the State Trial Court's denial of Petitioner's motion to dismiss for want of personal jurisdiction.

JURISDICTION

The judgment of the Minnesota Supreme Court was entered May 23, 1975. Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

The questions presented are:

(1) Whether the Minnesota corporate long-arm statute is applicable in view of the fact that payment under the contract is controlled by Nebraska law and such requires payment to be made in Nebraska, and

(2) Whether the assertion of *in personam* jurisdiction over the Petitioner, a foreign corporation, by the State of Minnesota, denies Petitioner's right to due process because the necessary "contacts" with the State of Minnesota do not exist.

CONSTITUTIONAL PROVISIONS

The constitutional provision involved is the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, U.S.C.A., Const. Amend. XIV, Section 1, which provides as follows:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any

law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The statutes involved are:

Minn. Stats. 303.13, subd. 1(3), which provides as follows:

Subdivision 1. A foreign corporation shall be subject to service of process, as follows:

(3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the secretary of the state of Minnesota and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort.

U.C.C. Section 2-310(a), Neb. Rev. Stats. (1971), which provides as follows:

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery;

STATEMENT OF THE CASE

On January 4, 1974, Respondent, American Pollution Prevention Company, Inc. (APPCO) and Petitioner, National Alfalfa Dehydrating and Milling Company (National Alfalfa) entered into an Amended Purchase Agreement (Appendix C, A12-A18) for the purchase of 3,800 head of Oakie Feeder Steers by National Alfalfa. The Amended Purchase Agreement was executed in O'Neill, Nebraska (Appendix G) and it called for the shipment of cattle, from various locations in Nebraska and South Dakota, to National Alfalfa's feedlot in Nebraska. Upon APPCO's failure to deliver the cattle within the specified delivery dates, National Alfalfa rescinded the contract. Hence, APPCO brought this cause of action in Hennepin County, Minnesota for breach of contract (Appendix C). Jurisdiction in Minnesota was based on Minn. Stats., Section 303.13, subd. 1(3) which provides as follows:

> Subdivision 1. A foreign corporation shall be subject to service of process, as follows:
>
> (3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the secretary of the state of Minnesota and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort.

National Alfalfa denied the breach and counterclaimed for failure to deliver within the specified delivery dates (Appendix D), which Respondent denied (Appendix E).

Following an unsuccessful attempt to remove the cause of action to the Federal District Court of Minnesota, National Alfalfa moved to dismiss the cause of action on the ground that Minnesota lacked personal jurisdiction over it, a foreign corporation (Appendix F). On May 23, 1975, the Minnesota Supreme Court affirmed the trial court's denial (Appendix B) of such motion (Appendix A).

APPCO is a Delaware corporation having its principal place of business in Minnesota. National Alfalfa is a Delaware corporation having its principal place of business in Shawnee Mission, Kansas. National Alfalfa is not licensed to do business and has never maintained an agent for service of process in Minnesota. National Alfalfa has no office, mailing address, telephone listing, bank account, or employees who reside in Minnesota. Nor does it own, lease or possess any real or personal property in Minnesota.

The only evidence of contacts, which National Alfalfa has with Minnesota, is based upon an affidavit by A. P. McMaster, Vice President of APPCO (Appendix H). Although unsupported by any language in the Amended Purchase Agreement, McMaster's affidavit alleges that payment was to be made in Minnesota. Both the trial court and the Minnesota Supreme Court found that since payment was to be made in Minnesota, such satisfied the requirement under the Minnesota corporate long-arm statute. However, it now appears that the place of payment is controlled by Nebraska law and such requires payment be made in Nebraska, U.C.C. Section 2-310(a) Neb. Rev. Stats. (1971).

Based upon the erroneous statement that payment was to be made in Minnesota, the Minnesota Supreme Court went on to hold that Minnesota could assert *in personam* jurisdiction over National Alfalfa without violating the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. The decision was based upon the fact that National Alfalfa had sufficient contacts with Minnesota. Other than the erroneous affidavit concerning payment and two discussions involving the general business relations between APPCO and National Alfalfa, all other contacts with Minnesota were based merely upon McMaster's information and belief and they are totally unrelated to the instant cause of action. These contacts involved the shipment of dehydrated alfalfa to certain firms in Minnesota, none of whom are a party to this action. Such contacts are totally unrelated to this cause of action which centers around an Amended Purchase Agreement (Appendix C, A12-A18). This agreement was executed in Nebraska (Appendix G), called for the shipment of cattle from various locations in Nebraska and South Dakota to Petitioner's feedlot in Nebraska, and was to be construed in accordance with Nebraska law—it was clearly a Nebraska transaction.

At present, trial of the instant cause of action on the merits is pending this Court's determination of whether Minnesota's assertion of *in personam* jurisdiction violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

REASONS FOR GRANTING THE WRIT

1. In determining whether a State has jurisdiction over a foreign corporation, the first step is to ask whether the limitations, under the State's long-arm statute, exclude the present suit, *Aftanase* v. *Economy Baler Company*, 343

F.2d 187 (8th Cir. 1965). In applying this analysis to the instant action, the Minnesota corporate long-arm statute requires that the contract be performed in whole or in part in Minnesota.

The only evidence of performance in Minnesota is the affidavit of A. P. McMaster which states that payment was to be made in Minnesota. However, since the Amended Purchase Agreement (Appendix C, A12-A18) is silent as to the place of payment, the law of Nebraska controls and it requires that payment be made in Nebraska at the place of delivery, U.C.C. Section 2-310(a) Neb. Rev. Stats. (1971). Hence, the instant facts do not come within the purview of the Minnesota corporate long-arm statute.

The decision was based on McMaster's affidavit which stated that payment was to be made in Minnesota. However, this affidavit is not controlling in view of the fact that the Nebraska Uniform Commercial Code specifically requires that payment be made in Nebraska, the place of delivery. There is no basis for applying the corporate long-arm statute because no part of the contract was to be performed in Minnesota. Moreover, Minnesota's assertion of *in personam* jurisdiction over National Alfalfa extends beyond due process limitations.

2. Although the concepts of *in personam* jurisdiction over a foreign corporation have evolved from the rigid rule of *Pennoyer* v. *Neff*, 95 U.S. 714 (1878), to the flexible standards of *International Shoe Co.* v. *State of Washington*, 326 U.S. 310 (1945), such evolution does not imply the demise of territorial limitations on the *in personam* jurisdiction of State courts. *Hanson* v. *Denckla*, 357 U.S. 235 (1958).

If a foreign corporation enters into a contract with a Minnesota resident and any portion of such contract is to

be performed by *either* party in Minnesota, such falls within the reach of Minnesota's corporate long-arm statute. It may be that Minnesota has attempted by this statute to thrust aside all jurisdictional barriers, but such an attempt badly offends the Federal Constitution, *cf. Mueller* v. *Steelcase, Inc.* 172 F. Supp. 416, 419 (D. Minn. 1959). If the breadth of this statute encompasses a contract made in another state which requires some *unilateral* performance in Minnesota, by a Minnesota resident, such encompassing jurisdictional power opposes the decisions of this court, *Hanson* v. *Denckla*, 357 U.S. 235 (1958).

3. The only Minnesota contacts from which the instant action arises are based upon McMaster's affidavit. There he stated that two meetings were held in Minnesota where the business relations of National Alfalfa and APPCO were discussed. He also stated that payment for the cattle was to be made in Minnesota, though such was unsupported by the Amended Purchase Agreement, and is in direct conflict with applicable Nebraska law.

Even if payment were to be made in Minnesota, the meager contacts of payment and preliminary meetings do not, within the confines of the Due Process Clause, allow Minnesota to assert personal jurisdiction over a foreign corporation where the contract was substantially made and to be performed in Nebraska. *Golden Belt Manufacturing Co.* v. *Janler Plastic Mold Corp.*, 281 F. Supp. 368 (M.D. N.C. 1967). In *Braasch* v. *Vail Associates, Inc.*, 370 F. Supp. 809 (N.D. Ill. 1973), the court stated that the mere payment of money, shipment of goods into, or advertising in a State would not confer personal jurisdiction on that State, *Id.* at 814.

The Supreme Court of Minnesota has held that where the only connection with Minnesota is the payment of

money in that State, such contact is less than the minimum contacts required by "traditional notions of fair play and substantial justice." *Fourth Northwestern National Bank of Minneapolis* v. *Hilson Industries, Inc.*, 264 Minn. 110, 117 N.W.2d 732 (1962); *accord Marshall Egg Transport Company* v. *Bender-Goodman Co., Inc.*, 275 Minn. 534, 148 N.W.2d 161 (1967). Even though these Minnesota decisions are not binding on the Federal question of due process, they are of weight, *Aftanase* v. *Economy Baler Company*, 343 F.2d 187 (8th Cir. 1965), and such decisions may further limit the extensions of a State's personal jurisdiction, see *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437, 440 (1952); *Aftanase* v. *Economy Baler Company*, 343 F.2d 187 (8th Cir. 1965).

The two business trips to Minnesota to discuss the business relations between National Alfalfa and APPCO fall far short of the confines of due process. *Tommills Brokerage Company* v. *Loeb, Rhoades & Company*, 411 F.2d 764 (7th Cir. 1969); *Amco Transworld, Inc.* v. *M/V Bambi*, 257 F. Supp. 215 (S.D. Tex. 1966).

The mere existence of a business relationship with a resident of the forum State does not automatically confer jurisdiction on that state, *Braasch* v. *Vail Associates, Inc.*, 370 F. Supp. 809 (N.D. Ill. 1973).

4. Regarding the question of due process, the Minnesota Supreme Court seemingly based its holding upon National Alfalfa's shipment of dehydrated alfalfa to various Minnesota firms. However, such contacts are unrelated to the instant cause of action.

In *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) this Court held that the forum State may assert personal jurisdiction in a cause of action not arising out of the activities in the forum State where the ac-

tivities in the forum State involved the supervision of all wartime activities of the foreign corporation.

In *Ratliff* v. *Cooper Laboratories, Inc.*, 444 F.2d 745 (4th Cir.), *cert. denied*, 404 U.S. 948 (1971), it was stated that if the plaintiff's injury does not arise out of something done in the forum State, then other contacts between the corporation and state must be fairly extensive before the burden of defending a suit there may be imposed without offending "traditional notions of fair play and substantial justice."

Unlike the defendant in *Perkins* v. *Benguet Consolidated Mining Co., supra*, National Alfalfa does not supervise its entire operations from Minnesota. The casual Minnesota "contacts" involve the shipment of dehydrated alfalfa into Minnesota and such does not involve the systematic and continuous supervision of National Alfalfa's activities. National Alfalfa is not licensed to do business in Minnesota. It does not have a registered agent for service of process in Minnesota. National Alfalfa has no office, mailing address, telephone listing, bank account, or employees who reside in Minnesota. Nor does it own, lease or possess any real or personal property in Minnesota. Moreover, even though it has advertised in Minnesota publications, such does not subject it to Minnesota jurisdiction. *Benjamin* v. *Western Boat Building Corporation*, 472 F.2d 723 (5th Cir. 1973).

The case of *Fannin* v. *Chesapeake and Ohio Railway Company*, 204 F. Supp. 154 (W.D. Pa. 1962) involved a tort which occurred in Kentucky. It was held that the Federal District Court of Pennsylvania did not have personal jurisdiction over the defendant even though it carried on a continuous and effective program of solicitation in Pennsylvania. The fact that *Fannin* involves a tort as

opposed to a contract should be of little consequence, since a tort generally requires less contacts than a contract, *Thompson* v. *Kiekhaefer,* 372 F. Supp. 715 (D. Minn. 1973).

Significant in the instant action is the lack of a "rational nexus" between the forum State and the Amended Purchase Agreement. National Alfalfa's sales of dehydrated alfalfa to other Minnesota firms are at best a minimal contact with that State, are totally unrelated to APPCO's cause of action and do not provide a basis for the exercise of personal jurisdiction. *Washington Scientific Indus., Inc.* v. *Polan Indus., Inc.,* 302 F. Supp 1354, 1359 (D. Minn. 1969); *accord, Bowman* v. *Curt G. Joa, Inc.,* 361 F.2d 706 (4th Cir. 1966); *cf. Aftanase* v. *Economy Baler Company,* 343 F.2d 187 (8th Cir. 1965).

CONCLUSION

It is respectfully submitted that Minnesota lacks *in personam* jurisdiction over National Alfalfa. Since payment was to be made in Nebraska, U.C.C. Section 2-310(a) Neb. Rev. Stats. (1971), no part of the contract was to be performed in Minnesota. Hence, the instant action does not come within the purview of the Minnesota corporate long-arm statute.

Secondly, the assertion of *in personam* jurisdiction violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. The shipment of dehydrated alfalfa to Minnesota firms by National Alfalfa is an activity which is totally unrelated to the present action and such does not measure up to the continuous and systematic activities of the defendant in *Perkins* v. *Benguet Consolidated Mining Co., supra.* The in-

stant action centers around a Nebraska transaction which involved the sale of cattle to be shipped to Petitioner's Nebraska feedlot from points in Nebraska and South Dakota. To allow the State of Minnesota to assert personal jurisdiction in this matter would not only offend the "traditional notions of fair play and substantial justice," but would herald the eventual demise of all restrictions on the personal jurisdiction of state courts.

Respectfully submitted,

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